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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of:	)	
	)	
Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming	)))	CS Docket No. 01-129

REPLY COMMENTS OF COMCAST CORPORATION

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SUMMARY

As discussed in Comcast's initial comments, and as reflected in the comments submitted by a number of other parties, MVPD competition today is mature, robust, and ubiquitous. Market circumstances are more dynamic and more volatile than ever before. This is chiefly because of the presence of multiple, independent, facilities-based competitors (especially two full-service Direct Broadcast Satellite companies with nationwide coverage), as well as the rapid pace of technological change and the still-evolving responses of consumers to the ever-changing array of service options.

In these reply comments, Comcast provides more company-specific information regarding its evolution as a "new products company," balancing the need for aggressive investment and innovation to meet consumer desires with the need to maintain fiscal discipline and responsibility. We also urge the Commission to ease existing regulatory burdens on cable operators – and to dismiss, out-of-hand, proposals to establish new and unneeded requirements and restrictions.

Comcast is the fourth largest multichannel video programming distributor – and the third largest cable multiple system operator – serving over 8.4 million subscribers in 26 states. We face intense and still-growing competition in the provision of MVPD services. The strongest and most ubiquitous competitors are the two DBS companies, DirecTV and EchoStar, but additional competitive pressures include direct-to-home satellite services, satellite master antenna systems, multichannel multipoint distribution services, and open video systems. In addition, in the near-term future, new optical services being developed and deployed by the regional Bell operating companies ("RBOCs") may provide significant additional competition.

In response to this competition, Comcast is increasing investment, clustering its operations, and providing a growing array of services. As a result of $5 billion of capital expenditures since 1996, the capacity of our cable plant has expanded significantly and now supports, in addition to analog video, digital cable service and high-speed cable Internet services – both of which have enjoyed tremendous marketplace success. We are also readying video-on-demand service (for which significant market roll-out will begin this year), and continuing preparations for IP telephony and interactive television services.

Despite the intense competition that now characterizes MVPD services, some parties have used the opportunity presented by this proceeding to advocate perpetuating or expanding the regulatory burdens imposed on cable operators. All of these arguments are without merit.

In particular, there is no need to continue to subject cable operators – and no one else – to a prohibition on exclusive contracts with any satellite-delivered programming network in which any cable operator has an attributable interest. This prohibition was adopted by Congress in recognition of the nascent state of MVPD competition in 1992. It makes no sense today, as applied to marketplace conditions in 2001. Given the level of MVPD competition that has now developed, which is *at least* equal to what Congress might reasonably have hoped in 1992, it is entirely appropriate to permit the prohibition on exclusive contracts to sunset.

The time is now ripe also to conclude the Commission's proceedings on cable Internet services and interactive television. There is no evidence of market failure requiring government intervention. The prospect of unnecessary government regulation serves only to chill investment, innovation, and risk-taking.

The Commission should also abandon further consideration of requirements that cable operators carry both analog and digital signals for local television broadcasters. The Commission has already dismissed such demands on multiple occasions, and further review of the issue would only waste agency and industry resources.

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REPLY COMMENTS OF COMCAST CORPORATION

Comcast Corporation ("Comcast") is pleased to provide the following reply to the comments filed on or about August 3, 2001, in response to the above-captioned Notice of Inquiry ("*Notice*").[1] Our own initial comments provided an overview of competition among multichannel video programming distributors ("MVPDs"), which has grown enormously over the past several years. As we noted, MVPD competition today — in sharp contrast to the conditions existing in 1992 (when Congress passed the Cable Act) or 1994 (when the Commission issued its first video competition report) — is mature, robust, and ubiquitous. Many of the other first-round comments provided additional support for this proposition.

At this stage, Comcast wishes to provide more company-specific information, responding to specific questions in the *Notice*, as well as to respond to the initial comments of other parties. Although we now provide more in the way of "snapshot" information as of June 30, 2001, as the Notice requested, the crucial characteristics of Comcast's business are anything but static. To the contrary, market circumstances are more dynamic more volatile than ever before. This is chiefly because of the presence of

[1] FCC 01-191 (released June 25, 2001).

multiple, independent, facilities-based competitors (particularly from the two full-service Direct Broadcast Satellite ("DBS") companies with nationwide coverage), as well as the rapid pace of technological change and the still-uncertain responses of consumers to the ever-changing array of service options.

These factors make it more essential than ever that Comcast continue to pursue its strategy to be a "new products company," balancing the need for aggressive investment and innovation to meet consumer desires with the need to maintain fiscal discipline and responsibility. The same factors make it appropriate for the Commission to ease existing regulatory burdens on cable operators – and dismiss, out-of-hand, proposals to establish new and unneeded requirements and restrictions.

I. INTRODUCTION

Comcast began as a very different company in a very different time. Founded in 1963 in Tupelo, Mississippi, with just over 1000 customers, the company has since experienced extraordinary growth in the scale and scope of its business. Today, Comcast Cable is the fourth largest MVPD – and the third largest cable multiple systems operator ("MSO") – serving over 8.4 million subscribers in 26 states.[2] Comcast Corporations aggregate revenues for the year ending December 31, 2000, were $8.219 billion, of which approximately $4.185 billion was attributable to various cable services and $3.536 billion was attributable to Comcast's commerce services (QVC and subsidiaries).

As Comcast discussed in its initial comments, and as further explained below, Comcast faces intense and still-growing competition in its MVPD services. The strongest and most ubiquitous competitors are the two DBS companies, DirecTV and

[2] As of June 30, 2001, Comcast had 8.307 million cable subscribers, which represents substantial growth from the 4.5 million subscribers reported two years ago.

EchoStar, but additional competitive pressures include direct-to-home ("DTH") satellite services, satellite master antenna systems ("SMATV"), multichannel multipoint distribution services ("MMDS"), and open video systems ("OVS"). In addition, in the near-term future, new optical services being developed and deployed by the regional Bell operating companies ("RBOCs") may provide significant additional competition.

In response to such competition, Comcast is increasing investment, clustering its operations, and providing a growing array of services. Growth in existing geographic service areas is now coming less from adding new customers than from selling additional services to existing customers.[3] Comcast is also growing via acquisitions. As competitive pressures place an increasing burden on companies to excel in management, execution, and customer satisfaction, acquisition opportunities are created for entities, like Comcast, that do so.

The record in this proceeding reflects extraordinary levels of competition in MVPD services and justifies retreat from regulations designed for the vastly different environment that existed in 1992. Neither facts nor law justify proposals to *expand* regulatory burdens on cable operators, as proposed by a handful of backwards-looking parties.[4]

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[3] Because customers now frequently purchase multiple broadband services, and to assist Comcast in monitoring and responding to evolving consumer preferences, we measure quantities purchased for these varied services in terms of "revenue generating units," or "RGUs."

[4] Unfortunately, some of the first-round comments generate more heat than light. The rhetoric is especially overheated in the comments filed by EchoStar, whose contribution to the discussion consists mostly of invectives hurled at the cable industry. *See* EchoStar Comments at 2 ("vice-like grip" and "leverage their incumbency"), 3 ("monopolists"), 5 ("unacceptably high degree of market power," "extract . . . onerous terms and conditions," and "unrestrained market dominance"), and 6 ("chronic [cable] price increases"). Predictably, none of these references is substantiated.

II. INTENSE COMPETITION, CHANGING TECHNOLOGY, AND OTHER MARKET FORCES CONTINUE TO DRIVE COMCAST'S EVOLUTION AS A MULTI-FACETED PROVIDER OF COMMUNICATIONS SERVICES.

The Notice solicits information on a wide variety of topics. It particularly inquires about "cable television's financial performance, capital acquisition and disposition, system transactions, rates, channel capacity, programming costs, subscribership, viewership, and new service offerings." *Notice* at ¶ 15. The Notice also asks numerous questions about competition among MVPDs, new services and new packages of services, and clustering. *E.g., Notice* at ¶¶ 6, 7, 11, 13, 20, 21. The following paragraphs supplement the information Comcast provided in its response to the Cable Service Bureau's channel capacity survey[5] and Comcast's initial response to the Notice.

A. Description of Current Cable Service Offerings

The main cable services that Comcast is currently providing to its customers are traditional analog cable, digital cable, and high-speed cable Internet. Service descriptions and pricing information are provided below.

Of course, the characteristics of Comcast's service offerings vary from market to market. This is so for a variety of reasons. For example, different local franchising authorities impose different requirements on Comcast. There are also differences among Comcast's cable systems that are attributable to the divergent practices of various prior owners of systems that Comcast has acquired by purchase or swaps at different times in recent years; for such systems, transitions to a common model (of content, pricing, etc.) occur gradually, over time. Competitive circumstances, too, differ from market to

[5] *See* Letter from James R. Coltharp, Comcast Corporation, to Kenneth Ferree, FCC, CS Docket No. 98-120 (May 29, 2001) ("Survey Response").

market. Thus, the service descriptions and pricing information below are intended to be accurate in general terms, but they do not necessarily represent the situation with regard to any given community.

1. Analog cable service.

Generally, Comcast offers a minimum of three tiers of analog cable service, plus "premium" channels. First, there is a low-priced basic service for approximately $9-12 per month. This service generally includes local broadcast stations, PEG channels, and C-SPAN. Second, there is a "cable programming service" tier that generally comprises approximately 50-70 channels (services such as ESPN, CNN, Discovery, MTV, A&E, etc.) for another $25-30 per month. Third, for those customers desiring additional services, Comcast also usually offers at least one "new product" tier, which includes eight or nine newer programming services for an additional $5-8 per month. In addition to these packages, Comcast also offers various "premium" services (such as HBO, Showtime, and Cinemax), which are available both on a per-channel basis and also as part of various packages of premium channels.

Three points about these services and their pricing warrant emphasis. First, Comcast was a leader in making available a so-called "skinny basic" that offers local broadcast signals (plus PEG channels and C-SPAN) at a price that is significantly below the typical price for basic service. Second, despite continued pressure from rising input costs due to significant upgrades and programming costs, a Comcast subscriber generally pays on average between $0.45 and $0.59 per channel, which is well below the national average of $0.65-0.66 for systems with comparable numbers of channels reported in the

Commission's most recent price survey.[6] Third, despite press coverage of cable rates that often treats "cable service" as if it were a unitary, monolithic offering, in truth tiering gives customers more control than previously over the services they receive and the prices they pay. Comcast's decision to place additional channels on the optional new product tiers, in particular, has led to greater price stability on the basic and cable programming service tiers.

2. Digital video.

Comcast generally offers two digital video services. The original digital service, Comcast Digital Basic, was introduced at a price point of approximately $10 additional per month. It typically offers an electronic program guide, with improved navigation functionality and improved parental controls, as well as roughly 170 channels of multiplexed premium channels, premium pay-per-view channels, and commercial-free, compact disc-quality, music channels. This service is an attractive upgrade for customers who value premium channels like HBO and Showtime, because instead of having one of each they may have six, eight, or even 10 choices. Comcast's Digital Plus service, also referred to as the "digital tier," which is generally priced at an incremental $5 above the foregoing, adds roughly 40 more channels similar in format to those traditionally found on the cable programming service tier (e.g., BBC America, Discovery Civilization, and other commercially supported services).

Comcast launched digital video services in June 1998, and the marketplace response was overwhelmingly favorable. By year-end 1999, we had 500,000 customers.

[6] Implementation of Section 3 of the Cable Television Consumer Protection and Competition Act of 1992; Statistical Report on Average Rates for Basic Service, Cable Programming Services, and Equipment, at ¶ 11, MM Docket No. 92-266 (rel. Feb. 14, 2001) ("*2000 Price Survey*") (prices for channels provided by operators not yet meeting statutory "effective competition" test).

By the time of last year's video competition comments, we had nearly one million customers and were predicting 1.25 million by year-end. In fact, by the end of 2000, Comcast had signed up 1.35 million digital video customers. This number increased by another half-million in the first half of 2001, for a total of 1.84 million (and a penetration rate of roughly 28%). We currently project that Comcast will have 2.2 million digital cable subscriptions by year-end. Importantly, due to the aggressive rebuild in which Comcast has been engaged, digital cable is now available to 97% of our subscribers.

3. High-speed cable Internet service.

Like digital cable, high-speed cable Internet service has engendered a strong and favorable response from consumers. Despite articles and commentary suggesting that the lack of a "killer app" to encourage replacing dial-up Internet access with high-speed services is slowing the move to high-speed services, the reality is that vast numbers of consumers are choosing services that couple high-speed downloads with the convenience of an "always-on" connection. In fact, the rate of adoption for cable Internet and competing broadband services is greater than for most any new electronics product in recent history.

Comcast@Home is roughly 50 times faster than a 56k modem, and can transmit data up to twice as fast as DSL lines. This service is currently priced at $29.95-$39.95 per month for Comcast cable service customers, or $42.95-$44.95 for non-Comcast cable service customers. Equipment may be purchased ($199) or leased ($5-15/month).

Comcast launched its high-speed Internet service in July 1998, and ever since growth has repeatedly outpaced even aggressive forecasts. Comcast@Home had 50,000 subscribers by YE 98, approximately 150,000 by YE 99, and 260,000 customers as of last year's video competition comments (9/29/00). By YE 00, Comcast had 400,000 cable Internet customers, 50,000 more than it had predicted just three months earlier.

This growth has not yet abated. As of June 30, 2001, Comcast@Home had 675,600 subscribers, which represented an increase of 101,300 in the second quarter 2001 (7800 net additions per week). We recently increased our forecasts for the remainder of the year, and now expect to have 950,000 subscribers by year-end (up dramatically from our prior estimate of 750,000).

Comcast@Home is available to 8.0 million households, or approximately 60% of homes passed. We expect this to rise to nearly 10 million homes – or 73% of homes passed — by YE 01. By contrast, the service was available to 4.4 million households at the time we filed last year's video competition comments. Penetration now frequently averages 10% in those areas where Comcast is currently able to offer the Internet service, and is well over 20% in some service areas. This, of course, is in competition with DSL, as well as satellite-based and wireless Internet providers.

Comcast's relationship with @Home, which has been the exclusive ISP for Comcast cable Internet customers, continues to evolve. In particular, the contractual exclusivity requirement is now scheduled to terminate on December 4, 2001, and Comcast has informed @Home of its intent to terminate its existing distribution agreement effective June 4, 2002.

4. Telephone services.

Comcast currently offers telephone services in several markets. We have continued telephone operations associated with several cable systems acquired in the past several years, and as a result are conducting circuit-switched operations in Florida, Maryland, Virginia, and Michigan. We are also offering long distance services in 14 states.

This year, in February, we launched Comcast Business Communications, which provides fast, scalable Internet, data, and voice solutions over a state-of-the-art fiber optic network.[7] Comcast also remains a leader in CableLabs' PacketCable initiative, and we are also continuing to explore the opportunity to use our IP platform to offer some form of voice-enhanced data service.

B. Comcast Faces Ever-Increasing Levels of Competition from Other MVPD Providers.

Last year's video competition report found that "competitive alternatives and consumer choices continue to develop."[8] More recently, in the *2000 Price Survey*, the Commission acknowledged that "DBS is a substitute for cable services."[9] Today, MVPD competition is still advancing and intensifying.

1. DBS.

The main MVPD competition comes from DBS. Now, with a full year of experience under the Satellite Home Viewer Improvement Act, which has improved DBS providers' ability to offer local broadcast signals to their customers, it is clear that DBS is continuing to prosper – and is growing much more rapidly than cable.

Last year, DBS providers added three million subscribers, while basic cable subscribers grew only at roughly the rate of household growth. Nationwide, DBS has

[7] Operations began in Baltimore, and are being expanded to Philadelphia, New Jersey, Virginia, and Detroit during 2001.

[8] *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, CS Docket No. 00-132, Seventh Annual Report, FCC 01-1, at ¶ 5 (rel. Jan. 8, 2001).

[9] *2000 Price Survey* at ¶ 67.

gone from *no* customers in 1992 and *only 40,000* at the time of the first video competition report to *16 million* today. Although many believed that DBS held the potential to thrive only in areas not served by cable, the reality today is clearly otherwise. Fully 70% of DBS customers are in areas served by cable. Recent and compelling evidence of aggressive DBS competition is provided by EchoStar's current marketing promotion, which offers 100 channels for $9 per month, plus free installation, to those who buy a $199 DISH network satellite TV system and sign a 12-month contract, and which concludes with the pointed tag line "Can your cable company do that?".[10]

2. Terrestrial Competitors.

Comcast is also experiencing significant competition from what used to be called "overbuilders" and may now be more accurately characterized as broadband service providers. RCN and Knology, in particular, are competing with Comcast in providing cable television and high-speed Internet services (they routinely offer telephone services as well).

Knology is competing with Comcast in Charleston, SC, Panama City, FL, Huntsville, AL, Knoxville, TN, and August, GA. RCN currently competes with Comcast in Washington, DC,[11] and areas around Philadelphia.[12] Broadband Connect has obtained OVS franchises in 30 Maryland communities in the Baltimore and Washington region.

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[10] *See* "I Like $9 Promotion," available at http://www.dishnetwork.com/content/promotions/like9/index.shtml, visited Aug. 29, 2001.

[11] RCN is currently providing OVS service under the Starpower name in Washington, DC, and Gaithersburg, MD. RCN has been awarded cable franchises in Arlington County, VA, Prince George's County, MD, and Montgomery County, MD, and is in negotiations in Alexandria, VA, Reston (Fairfax County), VA, and Baltimore County, MD.

[12] RCN has agreements to serve 20 communities around Philadelphia, PA and Union, NJ and is currently building or serving in dozens of townships in Delaware and Bucks-Counties, PA. Although RCN has retreated from plans to expand into certain new markets for financial reasons, in its existing markets RCN continues to compete vigorously.

In the Ameritech region, where Comcast previously faced competition from Ameritech's cable operations in Michigan and Indiana, the owner of these systems has changed but the competition continues; these systems have since been sold to Wide Open West. In other communities, Comcast's competitors include Western Integrated Networks, Everest Communications, Carolina Broadband, Grande Communications, and Digital Access.

In Comcast's home of Philadelphia, PA, Popvision, a wireless cable company with over 10,000 customers, has been serving Philadelphia for years and actively markets in service throughout the region. There are also numerous companies that serve apartment and condominium buildings.

C. Changes over Past 12 Months

Because the Commission prepares its video competition reports every year, it seems appropriate to describe several major developments that have occurred over the past 12 months. These include: further progress in Comcast's "clustering" strategy, continued upgrades of Comcast's cable plant, continued increases in program costs, progress in readying the roll-out of video-on-demand ("VOD"), and continued progress in Comcast's community and education initiatives.

1. Continued clustering

Over the past year, Comcast has continued its efforts to improve operational efficiency through clustering. Today, Comcast's operations are managed through four distinct regions: East (which includes our major clusters in Pennsylvania, New Jersey, and Connecticut), Mid-Atlantic (includes clusters in Maryland, Virginia, Washington, DC metro area, and Delaware), Midwest (includes clusters in Michigan, Indiana, Missouri, New Mexico, and Kansas), and South (includes clusters in Florida, Tennessee, Mississippi, Alabama, South Carolina, Kentucky, and Arkansas).

Over the past year, Comcast conducted several transactions that advanced the clustering strategy. In December 2000, we agreed to a swap in which we transferred approximately 700,000 subscribers to AT&T and acquired approximately 770,000 subscribers in Washington, DC, Naples, Florida, portions of the Philadelphia DMA, and various systems in the City of Detroit. In January 2001, we agreed to a swap with Adelphia of approximately 400,000 subscribers, providing Comcast with additional properties in the Philadelphia area, suburban Michigan, Muncie, IN, New Mexico, and Fort Myers, FL. We closed in April 2001 on an acquisition from AT&T of approximately 585,000 subscribers in Ocean City, MD, and the Eastern Shore, additional cities in New Mexico, and portions of Reading, Pennsylvania. Finally, Comcast closed in June 2001 on an acquisition from AT&T of approximately 112,000 subscribers in Baltimore, MD.

Clustering is a needed and appropriate response to the pressures of growing competition. Responding to the circumstances of the dynamic marketplace described above, and the geographic ubiquity of its major DBS and telephone competitors, Comcast has sought to achieve greater efficiencies and to provide better service. Clustering of systems enables more efficient use of network and system resources. For example, clustering yields economic benefits by requiring fewer headends to serve consolidated areas, creating more effective marketing and branding capabilities (allowing for more effective and efficient marketing of new products), and increasing network reliability while lowering network maintenance expenses. The efficiencies achieved through clustering help to offset the spiraling costs of programming. Clustering also enables

Comcast to strengthen its commitment to regional programming, as reflected in CN8, the regional news channel described in our August 3 comments which this month received an extraordinary 24 Mid-Atlantic Emmy nominations in 16 categories.[13]

2. Upgrades of current plant.

Another major change over the past year involves Comcast's continuing effort to improve the quality and capacity of its existing plant. Although significantly changing the technical characteristics of a plant that passes more than 10 million homes requires considerable time and capital, Comcast is pressing forward aggressively with its "rebuild." Indeed, prodded both by opportunity (the chance to offer new services and develop more "revenue generating units") and by competitive pressure (especially from DBS providers to offer digital video services and from DSL providers to provide high-speed Internet), Comcast has accelerated its rebuild.

As of June 30, 2001, 86% of Comcast's customers were served by systems of 550 MHz or greater, and 70% served by systems of 750 MHz or greater. At the current pace, with plant servicing approximately 250,000 homes being upgraded every quarter, we expect that, by year-end, 94% of customers will be served by systems with 550 MHz or greater, and 85 percent with 750 MHz or greater.[14]

All of this progress requires capital investment. Comcast Cable now expects to invest $1.75 billion in capital expenditures this year, up from the prior estimate of $1.45

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[13] *See* Comcast Press Release, "CN8, The Comcast Network, Awarded 24 Mid-Atlantic 2001 Emmy Nominations," (Aug. 15, 2001), available at http://www.cn8.tv/pressroom_sub.asp, visited Aug. 29, 2001.

[14] Such progress would constitute a major accomplishment even in a static environment. The ever-growing percentage of customers upgraded is all the more noteworthy in light of several swaps where Comcast relinquished upgraded systems and acquired systems that had not yet been upgraded.

billion (half of this increase is due to accelerated rebuild and half is attributable to the capital expenditures flowing from higher RGU targets). The magnitude of this commitment is highlighted by comparison to prior years' cap-ex numbers: $291 million in 1996, rising to $498 million in 1997, increasing further to $712 million in 1998 and $774 million in 1999, and rising again to $1.248 billion in 2000.

Thus, in the aggregate, Comcast's capital expenditures by year-end will total over $5 billion since 1996. This is the basis for the growth of digital video and cable Internet discussed above, and it will pave the way for VOD, IP telephony, and ITV in the years to come.

3. Increasing program costs

Another major phenomenon over the past year has been continued escalation in the costs of acquiring video programming. Although competition and political pressures prevent retail rates for cable services from being raised much more than the rate of inflation, programming costs are not similarly constrained.

In each of the past two years, Comcast's programming costs have increased by 13-15%. Some services increased as much as 33%. As reported in USA Today, "ESPN is in the process of invoking its fourth annual 20% increase in rates to cable operators . . . bringing the price per home to $1.40-$1.60 a month."[15] Increases in sports licensing fees continue to put upward pressure on prices for sports channels, even as ratings for many sporting events continue to decline.[16]

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[15] Rudy Martzke, *Rivals Might Fight for Rights*, USA Today, June 29, 2001, at 3C.

[16] *See, e.g.*, R. Thomas Umstead, *Why the Series Struck Out*, Cablevision, Nov. 13, 2000 (the 2000 World Series "attracted fewer TV viewers than any other World Series in history and continued an alarming trend of declining ratings for sports events that were once considered home runs for networks"); *Giants' Barber Won't Slow Down Despite Broken Arm*, Washington Post,

4. Readying VOD

As noted above, Comcast considers itself to be a "new products company," with the opportunity – and the need – to continue to make new services available to consumers. Over the next year, the new product that will be our highest priority is video-on-demand. Currently, the company is conducting trials in four markets, including Willow Grove, PA. But we expect to make VOD service available to fully 2 million customers by YE 01, and to expand substantially in 2002.

Video-on-demand will offer a variety of content, delivered in real-time over the cable plant. Consumers will enjoy the same functionalities they have come to expect from videocassette recorders and DVD players: stop, pause, fast-forward, and rewind. We have acquired access to several hundreds of hours of programming, for which we expect to charge $3.95 for new movies (allowing for unlimited viewing of the purchased title for a 24-hour period) and $1.95 for "library" titles (e.g., classic movies or select children's programming). VOD offerings may also include, at prices yet to be determined, individual shows that were previously shown on certain cable networks. Comcast is currently exploring a form of subscription VOD with HBO.

One major issue yet to be resolved pertains to access to programming content. Access to all desirable studio output has not yet been secured, and while progress is being made, it has been slow. The willingness of studios to support the expansion of VOD will be a critical factor in its success.

Dec. 28, 2000, at D2 (in 2000, Monday Night Football drew its lowest ratings in 31 seasons; ratings dropped 7% from last season's previous low and have decreased for six straight seasons).

5. Education and other community initiatives.

Comcast continues to honor its commitment to serve the communities in which it operates through a variety of initiatives, especially in the field of education. One year ago, we informed the Commission of Comcast's provision of free Internet service to 700 schools and 70 libraries. Those numbers are now 1200 and 250, respectively. And Comcast has begun to offer a free modem and service to another 750 schools as part of its entry into the Washington, DC metropolitan area.

Comcast has now begun the teacher training initiative that had been planned a year ago. A partnership between the Comcast Foundation and Cable in the Classroom, known as Comcast Technology Academy, has already provided free technology training to over 1500 teachers in Montgomery County, a program that is gradually being expanded throughout the greater Washington area. Comcast has also developed an award-winning Web page devoted to education: www.onlineschoolyard.com. Comcast Corporation and the Comcast Foundation are engaged in many other community endeavors, focusing primarily on the relationship between technology and education.[17]

III. OBSERVATIONS REGARDING REGULATORY POLICIES

Our initial comments emphasized the robust competition that now exists for MVPD services and the correspondingly diminished need for regulations that are predicated on marketplace circumstances that - have changed dramatically since 1992. Nonetheless, some other parties have used the opportunity presented by this proceeding to advocate perpetuating or expanding the regulatory burdens imposed on cable operators, often in a blatant attempt to unfairly advance their own economic interests. We believe the Commission should reject those demands.

[17] *See generally* http://38.144.10.98/defaultframe.asp?section=in_the_community .

A. Program Access

Currently, no cable operator may enter into an exclusive contract for satellite cable programming or satellite broadcast programming with a vendor in which *any* cable operator has an attributable interest.[18] This prohibition applies to cable operators but not to anyone else. Despite some first-round comments that contend otherwise, the time has plainly come to permit the prohibition on such exclusive contracts to sunset. Competitive circumstances do not justify maintaining this restriction. Comcast therefore urges the Commission to permit the prohibition to expire — as scheduled — in October 2002.[19]

The exclusivity prohibition was originally based on the nascent state of MVPD competition in 1992. Whatever the merits of that decision then, it makes no sense today, as applied to marketplace conditions in 2001.[20] Given the level of MVPD competition that has now developed, which is *at least* equal to what Congress might reasonably have hoped in 1992, it is entirely appropriate to permit the prohibition on exclusive contracts to sunset.

It is important to recognize that the prohibition on exclusive arrangements for satellite-delivered programming owned by vertically integrated cable companies is an exceptional rule. With this singular exception, exclusivity is a common approach to distributing programming or other content in virtually all other media – newspapers, radio, broadcast television, film, new media, and so on. Government does not, for example, require the *Washington Post* to make David Broder's columns, or the entire Sports section of the *Post*, available to the *Washington Times*; rather, the *Washington*

[18] 47 U.S.C. § 548(c)(2)(D).
[19] *See* 47 U.S.C. § 548(c)(5).
[20] The Cable Services Bureau has previously recognized that this restraint was intended as a "transitional" provision. *See, e.g., RCN Telecom Services of New York*, 14 FCC Rcd. 17093 (Cab. Serv. Bur. 1999).

Times is expected to develop its own content, or to negotiate for it in the free market. ABC is not required to license "Who Wants To Be a Millionaire?" to CBS, or to PAX, or to a small independent TV broadcaster. DirecTV – a direct competitor of Comcast, but with more customers – is not required to make its exclusive "NFL Sunday Ticket" package available to Echostar, or to Comcast, or to any other cable, MMDS, OVS or other multichannel provider. Comcast, however, is forbidden to retain any exclusive content in a satellite-delivered network it owns, or to obtain an exclusive carriage agreement for any satellite-delivered network in which *any other* cable operator has an attributable interest.

The ability to create exclusive programming and create distinct offerings in the marketplace can serve as a spur to investment, creativity, and responsiveness to emerging audience wishes.[21] This is true whether the programming provider is a cable operator, a DBS operator, or any other wireline or wireless provider.

The question, then, is whether there are unique circumstances in the "cable world" that justify a unique rule applicable only to cable companies. The answer is no. The prohibition cannot be justified in light of the current extent of MPVD competition. And there is no excuse whatsoever for the current asymmetry as between cable companies and DBS providers. There is no principled argument for prohibiting exclusivity on the part of

[21] Just this week, Comcast and its terrestrially delivered regional network, CN8, announced plans to offer the most robust high school sports line-up of any television network in the country. Press Release, "*Comcast and CN8 To Offer Most Extensive High School Sports Coverage in the Nation*" (Sep. 4, 2001 available at http://biz.yahoo.com/prnews/010904/phtv010.html), (featuring "[one] football game each weekday afternoon, for a total of 71 games involving 103 high schools in Pennsylvania, New Jersey, and Delaware"). This represents a major investment in local and regional programming that benefits consumers -- it is programming that would not otherwise become available.

every cable company but permitting it on the part of DirecTV and EchoStar, the third and eighth largest MVPDs.

There is no need to respond to the bits of overheated and generalized rhetoric in first-round comments concerning program access issues, other than to note that (1) very few concrete program access complaints have ever been filed and (2) fewer still have ever been found to be meritorious. Comcast does wish to clarify the facts with regard to specific allegations made concerning two regional sports networks. As regards Comcast SportsNet ("CSN"), the regional sports network in the Philadelphia area, the Commission has already properly ruled — after careful study of the facts and the law — that this terrestrially delivered service is not subject to the exclusivity prohibition. DirecTV's claim (at 8) that this service "was specifically migrated to a terrestrial delivery mode for the purpose of evading the law" was considered – and decisively rejected – by the Bureau,[22] and this determination was affirmed by the full Commission.[23] Nonetheless, Comcast does not practice "exclusivity" with regard to this service; it is made available to all terrestrially delivered competitors in the market whether they are cable, MMDS, SMATV, or OVS. Thus, the service is provided to Time Warner, Popvision, and RCN[24]

[22] *DirecTV v. Comcast Corp.*, 13 FCC Rcd. 21,822, 21,836 (Cab. Serv. Bur. 1998); *see also EchoStar Communications Corp. v. Comcast Corp.*, 14 FCC Rcd. 2089, 2101 (Cab. Serv. Bur. 1999). In fact, CSN was a *new* service launched in October 1997. Many of the games now available on CSN were previously available on the now-defunct PRISM service, which also was terrestrially delivered and was not carried by any DBS provider.

[23] *DirecTV, Inc. v. Comcast Corp and EchoStar Communications Corp. v. Comcast Corp.*, 15 FCC Rcd 22,802 (2000), *appeal pending sub nom. EchoStar Communications Corp. v. FCC*, No. 01-1032 (D.C. Cir. filed Jan, 19, 2001). Similar complaints, in a slightly different factual context, were also brought against Cablevision, and these too were rejected – again, after careful consideration of the facts and the law. *See RCN Telecom Serv. of N.Y. v. Cablevision Sys. Corp.*, 14 FCC Rcd 17,093 (Cab. Serv. Bur. 1999), *aff'd*, FCC 01-127 (rel. May 30, 2001).

[24] The claim of Carolina Broadband (at 12) that "Comcast has refused to license this product... to RCN" is simply wrong. RCN complains (at 11-12) about the duration of the contracts but neglects to acknowledge that last year CSN gave all of its affiliates – including Comcast cable systems as well as RCN and the other affiliates mentioned above – agreements with the *same*

(although not DirecTV and EchoStar)[25] and was also provided to an OVS system operated by Verizon until that system ceased operations. Given that the Commission has already reviewed Comcast's business practices on four separate occasions and found them to be legitimate, the Commission need not concern itself further with this matter.

As for the Comcast SportsNet service delivered in the Washington, DC, area (which was previously known as "Home Team Sports" or "HTS"), Carolina Broadband (at 12) expresses concern about whether it will continue to be able to purchase this *satellite*-delivered service for the Raleigh, NC market. The answer is yes. Comcast has committed to make this service available through 2006 to overbuilders and to DBS providers (even if Comcast were to change the method of delivery, which Comcast has no plans to do, and even if the exclusivity prohibition were to be eliminated, which we hope it will be), and Comcast intends to honor this commitment. *No* party has been denied access to this programming; *no* complaints have been filed; and, thus, there is *no* need for the Commission to concern itself with this matter either.

Recognizing that the Commission must soon initiate a proceeding to decide whether the exclusivity prohibition should sunset, as scheduled, or should be extended, Comcast wishes to suggest criteria that the Commission may wish to apply in the

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short duration while significant business restructuring opportunities were reviewed. As RCN has been advised, CSN planned to resume offering standard multi-year agreements once that business restructuring process was completed. In fact, that review has now been completed, and RCN and other affiliates have been apprised of the price and term for a new five-year contract, commencing in October.

[25] Comcast has returned a substantial number of professional sports games to free over-the-air television in Philadelphia (under a previous owner, one of the teams had been removed completely from over-the-air TV). Moreover, many games of Philadelphia sports teams are available to DirecTV and EchoStar, through arrangements with local broadcasters or the leagues' national sports packages. It is extremely interesting that, despite the passage of SHVIA in 1999, neither DirecTV nor Echostar has chosen to carry the local Philadelphia broadcast stations that carries dozens of games of the three local sports teams.

forthcoming proceeding. Specifically, we propose that the Commission solicit comments on:

- The consumer and competitive benefits of permitting program exclusivity for satellite-delivered programming in which a cable operator has a financial interest;
- The evolution of a competitive MVPD marketplace since 1992;
- The extent to which exclusive agreements have been successfully used by large non-cable MVPDs;
- The lack of any principled basis for constraining exclusivity in cable contracts for satellite-delivered cable programming while not constraining exclusivity in DBS contracts;
- Whether sufficient alternative or competing programming networks exist so that, if certain satellite-delivered networks enter into exclusive agreements, other programming would likely remain available; and
- Whether the FCC would have tools to prevent discrimination, unfair methods of competition, or other unfair or deceptive acts or practices by vertically integrated satellite programming networks against competing MVPDs, bearing in mind the program access provisions that would continue to apply to satellite-delivered programming after sunset of the exclusivity limitation.

Finally, we strenuously urge the Commission to reject proposals to use the proceeding as a vehicle to consider expanding the program access rules. Congress specifically and consciously omitted terrestrially delivered signals from the exclusivity prohibition. It did so knowing terrestrial delivery is a common, cost-effective, and legitimate method of delivering local and regional programming. It presumably wished to promote the creation of locally- and regionally-oriented programming networks and to avoid burdening those networks with unnecessary regulation.

Accordingly, the Commission has no power to entertain proposals to extend the exclusivity prohibition to terrestrially delivered programming – even if such proposals represented good public policy, which they do not. The statute calls for the existing rule to be sunsetted in 2002 unless the FCC finds that retention is required. It does not empower the agency to rewrite and vastly expand the reach of the current provision.

B. Interactive Television

The National Association of Broadcasters (at 4-6) uses the occasion of this proceeding to renew its complaint that the advent of interactive television ("ITV") will allow cable operators to disadvantage broadcasters. Comcast has filed detailed comments and reply comments in the ITV proceeding (CS Docket No. 01-7) and will not reiterate here the detailed factual, legal, and policy analysis presented in that docket.

For now, it suffices to say that – in this area as well as in the cable Internet proceeding (GEN Docket No. 00-185) — the Commission's regulatory restraint to date has been welcome, but the Commission could bring greater comfort to the market by being more definitive regarding its intention *not* to regulate. Comcast accordingly renews its suggestion that the Commission close out both proceedings without adopting any regulations.

C. Must-Carry

Issues relating to must-carry were raised in the first-round comments of several parties. The comments of several low-power television licensees – in strikingly similar pleadings — complain of their inability to secure analog carriage on certain cable systems. As these systems do not belong to Comcast, we need not address the specifics of their complaints.

Nonetheless, a brief response is warranted to the assertion that, "even if the cable industry as a whole faces competition from over-the-air broadcasting and other multichannel video service providers, it has an absolute monopoly on each individual television receiver to which its wires are attached."[26] This is a peculiar assertion for at least three reasons. First, the statement is simply inaccurate; the connection of a television receiver to a cable system does nothing to prevent the consumer from using the television receiver to view signals that arrive from other connections (VCRs, compact disc players, computers, and/or external or internal RF antennas). Second, it implies that "monopoly . . . gatekeeper" regulation is required forever, no matter how competitive the MVPD market is, or becomes. This is certainly not a view that either Congress or the FCC has ever embraced, and it is not justified today as a matter of law or policy. Third, it ignores the significant numbers of television receivers that are *not* connected to MVPD services, even in homes that subscribe to MVPD services.[27]

Similarly misplaced are those comments which seek to strengthen broadcasters' efforts to secure compulsory carriage of their digital signals in addition to their analog signals.[28] Comcast has refuted these arguments at length in comments recently filed in CS Docket No. 00-185 and will not reiterate those comments here, except to note that NAB's complaint of broadcasters' difficulties in negotiating retransmission consent agreements for digital signals can be fully explained by their absence of concrete, intelligible plans to use the digital channels to provide compelling programming. Comcast remains willing to evaluate specific proposals and will, as always, negotiate in good faith.

[26] Dimarcantonio Comments at 1.

[27] National Association of Broadcasters Comments at 2 (46.5 million sets in broadcast-only homes, plus another 34.5 million sets in MVPD homes but not connected to MVPD service).

[28] *See id.* at 7-8.

IV. CONCLUSION

The foregoing comments provide a concise portrayal of Comcast's cable operations over the past year, but the forest is much more important than the individual trees. The main messages bear repeating. First, MVPD competition has successfully been established and is now flourishing. Second, the nature of the cable business is changing significantly, as bandwidth is expanded, digital technologies are increasingly deployed, and new services are introduced. Third, for all broadband service providers – and that is really the best name for the diverse group of companies with which Comcast competes — market conditions are extremely dynamic and volatile; technology, service packages, consumer preferences, and prospects for various competitors are all in constant flux.

For these reasons, and consistent with the overarching thrust of the Telecommunications Act of 1996, the Commission should adjust cable's regulatory burdens downward to reflect the vastly increased competition and exposure to risk that Comcast and other cable operators now face. Proposals for new regulatory burdens on cable should be summarily rejected.

Respectfully Submitted,

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